Office of the Navajo Tax Commission and Office of the Navajo Nation President & Vice President

100th Arizona Tax Conference Flagstaff, AZ August 31, 2017

Navajo Tax History

- 1978, Possessory Interest Tax enacted
- 1978, Business Activity Tax enacted
- April 16, 1985, US Supreme Court recognizes tribal tax authority <u>Kerr-McGee v. Navajo Nation</u>
- 1985, Oil & Gas Severance Tax enacted
- 1992, Hotel Occupancy Tax enacted
- 1995, Tobacco Products Tax enacted
- 1999, Fuel Excise Tax enacted
- 2001, Sales Tax enacted
- 2015, Junk Food Tax enacted
- 2015, Alcohol Tax enacted

Possessory Interest Tax (24 N.N.C. §§ 201-245)

- An ad valorum tax on the value of a possessory interest granted by the Navajo Nation. A possessory interest is the right to be on Navajo land performing a particular activity. The most common forms of interests are oil and gas leases, coal leases, rights-of-way, and business site leases.
- ONTC uses common appraisal methods to place a market value on the possessory interest. Possessory interests with a market value of less than \$100,000 are not taxed. The tax is assessed annually on August 1st, with half of the payment due November 1 and the remainder due the following May 1.
- The tax rate is 3%.



Business Activity Tax (24 N.N.C. §§ 401-445)



- An excise tax on the net source gains (gross receipts less deductions) from the sale of Navajo goods or services, with the legal incidence of the tax on the seller.
- Navajo goods are all goods produced, processed, or extracted within the Nation. The taxable source gains are calculated from the gross receipts of such goods or services, less deductions
- A standard quarterly deduction of the greater of \$125,000 or 10% of gross receipts, salaries and wages paid to Navajos, the cost of purchasing Navajo goods or services, and other payments made to the government of the Navajo Nation.

• The tax rate is 5%.

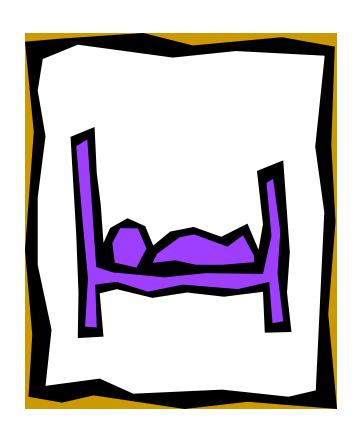
Oil & Gas Severance Tax (24 N.N.C. §§ 301-345)

- A tax on the removal of oil or gas from any lands located within Navajo jurisdiction, regardless of land ownership.
- The first purchaser of the product is responsible for filing and paying the tax, although the owner remains secondarily liable.



• The tax rate is 4%.

Hotel Occupancy Tax (24 N.N.C. §§ 700-741)



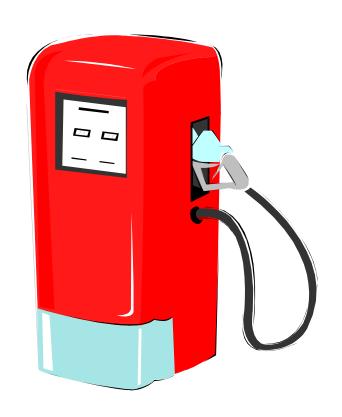
- A tax on the rental of a room in a hotel, motel, or bed and breakfast. The legal tax incidence is on the buyer but the hotel is responsible for filing forms and remitting the tax whether the tax is collected from the buyer.
- A discount of 1% is applied if the hotel files and pays early.
- Navajo government employees and public officials on official business are exempt from the tax.
- The tax rate is 8%.

Tobacco Products Tax (24 N.N.C. §§ 801-810)

- A tax on the sale of tobacco products by a distributor or a retailer. Tobacco products include cigarettes, cigars, snuff, chewing tobacco, etc.
- The Navajo Nation has an intergovernmental tax agreement with Arizona to enforce the tobacco taxes
- Tax rate is \$1 per pack of cigarettes, with the rate for cigars and smokeless tobacco calculated at various rates.



Fuel Excise Tax (24 N.N.C. §§ 901-923)



- Tax is upon distributor/wholesaler, who is responsible for filing and paying taxes. Refiners, Distributors, Carriers and Retailers all provide reports. A discount of 0.5% is applied if the distributor files and pays early.
- The Navajo Nation has an intergovernmental tax agreement with Arizona to enforce the tobacco taxes. The tax is collected in a similar manner to state gasoline taxes.
- Tax rates for gasoline is 18¢ per gallon and 25¢ per gallon for Diesel.

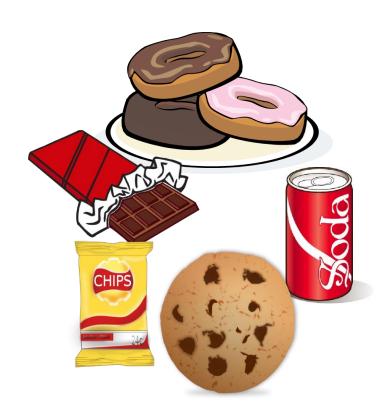
Sales Tax (24 N.N.C. §§ 601-624)

- A gross receipt tax upon the seller.
 The tax is imposed on all sales of goods or services within the Navajo Nation. Certain transactions are exempt, such as sale for resale, food stamps, vending machines, etc.
- The Navajo Nation has one township tax (Kayenta Township - Sales Tax) and is considering the imposing of local taxes by Navajo chapters.



• The tax rate is 5%.

Junk Food Tax (24 N.N.C. §§ 1101-1124)



- The gross receipt tax is imposed on the sales of food with minimal-to-no nutritional value item(s) or snacks. The legal incidence on the seller.
- The tax rate is 2%.

Alcohol Tax (24 N.N.C. §§ 1201-1224)

- The gross receipt tax is imposed on the retail sale of alcohol products within the Navajo Nation. The legal incident is upon the seller.
- The tax rate is 3.25%.



"Dual Taxation"

- "Dual Taxation" is a taxing situation that arises when a tribal government and state government impose similar taxes upon a similar activity involving a **non-Indian business**.
 - > Recognized by US Supreme Court Cotton Petroleum vs NM (1989)
- "Dual Taxation" is also referred to as **multiple taxation** when other governments tax the same activities

"Dual Taxation" Harmful

- "Dual Taxation" effects non-Indian owned businesses. Non-Indian owned businesses contribute to the Navajo Nation (NN) and State economies. They include construction companies, power plants, mines, retail stores, gasoline stations, etc.
- The NN and States must address this issue. The existence of "Dual Taxation" creates an unfriendly business environment (i.e. higher taxes), and impacts both the NN and States.

"Dual Taxation" Harmful (NN Sales Tax and AZ TPT)

- Arizona Transaction Privilege Tax:
 - ➤ State rate: 5.6%
 - > County option:
 - > Municipality option:
- NN Sales Tax Rate
 - ➤ Navajo Nation rate: 5%
- Effect: Non-Indian businesses are liable for over 10% in total retail taxes within the Navajo Nation

"Dual Taxation" Harmful (NN HOT and AZ TPT)

- Arizona TPT:
 - ➤ State rate 5.6%
- NN Hotel Occupancy Tax:
 - ➤ Navajo Nation tax rate 8%
- Effect: Non-Indian businesses are liable for over 13.6% in total hotel retail taxes within the Navajo Nation

Resolving "Dual Taxation"

- It is important to "Level the playing field" for businesses that locate within or outside the Navajo Nation.
- Both NN and Arizona will benefit from economic growth in northern Arizona.
- Ensure socio-economic benefits for:
 - ➤ The State
 - > Local communities
 - Navajo Nation

Resolving "Dual Taxation"

- Either government (NN or State) can waive or reduce their taxes to eliminate "Dual Taxation"
- The NN learned waiving taxes, enacting tax caps, and waiving jurisdiction is more harmful than beneficial.
 - Example: The NN in the 1960s waived taxes upon the coal mines and power plants that generated millions of per year but the NN receives no revenues or below market returns. Meanwhile, the States did not waive nor enacted a tax cap, and received their full tax revenues.
- NN historic position The NN waived its taxes but now asks the States to work with the Nation to provide joint tax credits or tax sharing.

Resolving "Dual Taxation"

- The federal government provides tax credits, employment tax credits and accelerated depreciation to companies within the Indian country.
- Federal courts can reverse or change the impact of "dual taxation."
- Overall, resolving "Dual Taxation" is a government-to-government issue.

Government-to-Government

- Tribes and states should negotiate agreements or approve laws that avoid "dual taxation" while at the same time not putting either side at a disadvantage
- Tribes and states should work with Congress to develop legislation that levels the playing field rather than relying on court jurisprudence
- States should consider Tribes as partners in economic development.

Navajo Nation and State Relations

The Navajo Nation has an established record in working with states.

- 1. **Arizona Tobacco Tax** State tax credit and IGA.
- 2. Arizona Fuel Excise Tax IGA.
- 3. **Arizona Transaction Privilege Tax/Navajo HOT and BAT** IGA.
- 4. **New Mexico Fuel Excise Tax** State tax credit and IGA.
- 5. **New Mexico Corporate Income Tax/Navajo BAT** Reciprocal state corporate tax credit against BAT.
- 6. New Mexico Gross Receipt Tax and Severance Tax/Navajo
 Nation BAT Reciprocal state tax credits and BAT for coal extraction.
- 7. **Texas Fuel Tax** IGA.
- 8. **Utah Gasoline Tax** State tax credit and IGA.
- 9. **Utah Sales Tax on Lodging** State tax credit and IGA.
- 10. **California Fuel Tax** IGA.
- 11. **Arizona Dual Tax Study Task Force** A state-created task force to study dual taxation and making recommendations to legislators.

Office of the Navajo Tax Commission

Phone (928) 871-6681 Fax (928) 871-7608

Physical address:

Karigan Professional Building Suites 115 and 116 St. Michaels, AZ

Mailing address:

Office of the Navajo Tax Commission P.O. Box 1903 Window Rock, AZ 86515

Internet address:

www.navajotax.org

